

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Homeland Security, Utilities, and Public Policy, to which was referred Senate Bill No. 245, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning
- 3 utilities and transportation and to make an appropriation.
- 4 Page 3, delete lines 4 through 42.
- 5 Delete pages 4 through 18
- 6 Page 19, delete lines 1 through 26.
- 7 Page 21, line 32, after "(a)" insert **"This section does not apply to**
- 8 **a corporation that has withdrawn from the jurisdiction of the**
- 9 **commission under:**
- 10 (1) IC 8-1-13-18.5; or
- 11 (2) IC 8-1-17-22.5.
- 12 (b)".
- 13 Page 22, line 14, delete "(b)" and insert **"(c) This subsection does**
- 14 **not apply to a communications service provider that is a**
- 15 **corporation organized under IC 8-1-13 (or a corporation organized**
- 16 **under IC 23-17-1 that is an electric cooperative and that has at**
- 17 **least one (1) member that is a corporation organized under**
- 18 **IC 8-1-13).".**
- 19 Page 22, line 25, delete "(c)" and insert **"(d)"**.
- 20 Page 22, line 38, delete "(d)" and insert **"(e)"**.
- 21 Page 22, line 40, delete "(a);" and insert **"(b);" .**

- 1 Page 22, line 42, delete "(b);" and insert "(c);".
- 2 Page 23, line 2, delete "(c)," and insert "(d),".
- 3 Page 23, line 7, delete "(c)," and insert "(d),".
- 4 Page 23, line 12, delete "(e) Subject to subsection (g)," and insert
- 5 **"(f) Subject to subsection (h),"**.
- 6 Page 23, line 30, delete "(f)" and insert "(g)".
- 7 Page 23, line 31, delete "(e)" and insert "(f)".
- 8 Page 23, line 33, delete "(g)," and insert "(h),".
- 9 Page 24, line 5, delete "(e)" and insert "(f)".
- 10 Page 24, line 8, delete "(g)" and insert "(h)".
- 11 Page 24, line 9, after "not" insert ":
- 12 **(1)"**.
- 13 Page 24, line 11, delete "." and insert "; or".
- 14 Page 24, between lines 11 and 12, begin a new line block indented
- 15 and insert:
- 16 **"(2) require any person to comply with this section if the**
- 17 **person is exempt from federal laws or regulations concerning**
- 18 **rates and conditions for pole attachments or other connections**
- 19 **to facilities."**.
- 20 Page 25, between lines 27 and 28, begin a new paragraph and insert:
- 21 **"(c) The term does not include a functionally equivalent service**
- 22 **provided by a person or an entity described in IC 8-1-2-1.1."**.
- 23 Page 28, line 31, delete "has the meaning set forth in IC 8-1-35-1."
- 24 and insert **"means a connection to the Internet that provides**
- 25 **capacity for transmission at an average speed of at least one and**
- 26 **one-half (1.5) megabits per second downstream and at least three**
- 27 **hundred eighty-four (384) kilobits per second upstream, regardless**
- 28 **of the technology or medium used to provide the connection. The**
- 29 **term includes a connection to the Internet provided by wireless**
- 30 **technology, copper wire, fiber optic cable, coaxial cable, broadband**
- 31 **over power lines, or other facilities or future technologies. The term**
- 32 **does not include any of the following:**
- 33 **(1) Value added services in which computer processing**
- 34 **applications are used to act on the form, content, code, or**
- 35 **protocol of any information transmitted.**
- 36 **(2) Value added services providing text, graphic, video, or**
- 37 **audio program content for a purpose other than transmission.**
- 38 **(3) The transmission of video programming or other**

- 1 **programming:**
- 2 **(A) provided by; or**
- 3 **(B) generally considered comparable to programming**
- 4 **provided by;**
- 5 **a television broadcast station or a radio broadcast station,**
- 6 **including cable TV, direct broadcast satellite, and digital**
- 7 **television.**
- 8 **(4) A connection to the Internet provided through satellite**
- 9 **technology."**
- 10 Page 30, line 21, after "area," insert **"at the average speeds set**
- 11 **forth in subsection (a),"**.
- 12 Page 32, line 12, delete "Notwithstanding:".
- 13 Page 32, delete lines 13 through 18.
- 14 Page 32, line 19, delete "(b)".
- 15 Page 32, run in lines 12 through 19.
- 16 Page 32, line 22, delete "or".
- 17 Page 32, line 24, after ";" insert **"or"**.
- 18 Page 32, between lines 24 and 25, begin a new line block indented
- 19 and insert:
- 20 **"(3) the unbundled access of one (1) provider to the network**
- 21 **elements of another provider for purposes of 47 U.S.C.**
- 22 **251(c)(3);"**.
- 23 Page 32, line 28, delete "(c) Except as provided in subsection (a) and
- 24 subject" and insert **"(b) Subject"**.
- 25 Page 33, line 2, delete "(d) Subject to subsection (a), if" and insert
- 26 **"(c) If"**.
- 27 Page 37, line 17, delete "2004, except that:" and insert **"2004.**
- 28 **However, a provider may do either of the following:"**.
- 29 Page 37, line 18, delete "the parties to a settlement agreement may
- 30 renegotiate" and insert **"Renegotiate"**.
- 31 Page 37, line 20, delete "; and" and insert ".".
- 32 Page 37, line 21, delete "the commission shall allow a provider
- 33 subject to a".
- 34 Page 37, line 22, delete "settlement agreement to increase" and insert
- 35 **"Increase"**.
- 36 Page 38, line 36, delete "1.5(c)" and insert **"1.5(b)"**.
- 37 Page 39, line 37, delete "This" and insert **"The commission may**
- 38 **revoke a certificate issued to a communications service provider**

1 under IC 8-1-32.5 if the communications service provider fails or
 2 refuses to report any information required by the commission
 3 under this subdivision. However, this".

4 Page 47, after line 42, begin a new paragraph and insert:

5 "SECTION 40. IC 8-1-6-2.5 IS ADDED TO THE INDIANA
 6 CODE AS A NEW SECTION TO READ AS FOLLOWS
 7 [EFFECTIVE JULY 1, 2009]: Sec. 2.5. (a) As used in this section,
 8 "communications service provider" refers to a communications
 9 service provider (as defined in IC 8-1-32.5-4) that has a certificate
 10 of territorial authority on file with the commission under
 11 IC 8-1-32.5.

12 (b) As used in this section, "division" refers to the division of
 13 consumer protection of the office of the attorney general created by
 14 IC 4-6-9-1.

15 (c) The communications service provider account is established
 16 in the state general fund to pay the expenses of:

17 (1) the commission in:

18 (A) performing any duties described in IC 8-1-2.6-13(d);
 19 and

20 (B) performing any other duties lawfully assigned to the
 21 commission under state or federal law with respect to
 22 communications service providers; and

23 (2) the division in performing any of the division's duties
 24 under IC 8-1-2.6-13(e).

25 The commission shall administer the account.

26 (d) The account consists of the following:

27 (1) Amounts appropriated by the general assembly under
 28 subsection (f).

29 (2) Any funds received from the federal government for the
 30 commission's use in performing any duties lawfully assigned
 31 to the commission with respect to communications service
 32 providers.

33 (e) All appropriations paid out of the account are subject to the
 34 prior approval of the general assembly, the governor, and the
 35 budget agency.

36 (f) There is annually appropriated to the commission and the
 37 division from the state general fund an amount not in excess of the
 38 respective annual expenses of the commission and the division

described in subsection (c). The expenses described in subsection (c) shall be determined by totaling:

(1) the commission's annual budget with respect to communications service providers, as approved by the governor and the budget agency; and

(2) the division's annual budget with respect to communications service providers, as approved by the governor and the budget agency;

plus any amount approved by the governor and the budget agency to be used for contingencies.

SECTION 41. IC 8-1-6-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) The term "public utility", as used in this chapter, shall mean and embrace every corporation, company, cooperative organization of any kind, individual, association of individuals, their lessees, trustees, or receivers appointed by any court whatsoever that on or after March 15, 1969, may own, operate, manage, or control any plant or equipment within the state for the conveyance of telegraph or telephone messages; or for the production, transmission, delivery, or furnishing of heat, light, water, or power or for the collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste, for service directly or indirectly to the public, but said term shall not include a municipality that may after March 14, 1969, acquire, own, or operate any of the foregoing facilities.

(b) The term "gross revenue", as used in this chapter, shall include all intrastate operating revenue received by a public utility for the conveyance of telegraph or telephone messages or for the production, transmission, delivery, or furnishing of heat, light, water, or power or for the collection, treatment, purification, or disposal in any sanitary manner of liquid or solid waste, sewage, night soil, and industrial waste for service directly or indirectly to the public. Provided, however, that such term shall not include revenue derived by a public utility in the sale of public utility services, products, or commodities to another public or municipal utility for resale by the latter."

Page 73, between lines 29 and 30, begin a new line double block indented and insert:

"(F) That the provider agrees to report, at the times required by the commission, any information required by

1 the commission under IC 8-1-2.6-13(d)(9).".

2 Page 73, line 39, after "effect." insert **"For purposes of this**
 3 **subsection, if a corporation organized under IC 8-1-13 (or a**
 4 **corporation organized under IC 23-17-1 that is an electric**
 5 **cooperative and that has at least one (1) member that is a**
 6 **corporation organized under IC 8-1-13) holds a certificate of public**
 7 **convenience and necessity issued by the commission before, on, or**
 8 **after July 1, 2009, that certificate may serve as the certificate**
 9 **required under this chapter with respect to any communications**
 10 **service offered by the corporation, subject to the commission's**
 11 **right to require the corporation to provide any information that an**
 12 **applicant is otherwise required to submit under subsection (a) or**
 13 **that a holder is required to report under IC 8-1-2.6-13(d)(9)."**

14 Page 80, line 17, delete "communications service provider account
 15 established by" and insert **"state general fund."**

16 Page 80, delete line 18.

17 Page 84, between lines 24 and 25, begin a new paragraph and insert:

18 **"(c) The commission may charge a fee for filing an application**
 19 **under this section. Any fee charged by the commission under this**
 20 **subsection may not exceed the commission's actual costs to process**
 21 **and review the application under section 17 of this chapter."**

22 Page 96, line 32, after ";" insert **"and"**.

23 Page 96, line 34, delete ";" and" and insert **"."**

24 Page 96, delete lines 35 through 36.

25 Page 99, line 25, delete "is not a person" and insert **"are not at least**
 26 **two (2) persons"**.

27 Page 99, line 26, delete "provides" and insert **"provide"**.

28 Page 99, line 28, delete "intends" and insert **"intend"**.

29 Page 100, line 32, delete "is not a person" and insert **"are not at**
 30 **least two (2) persons"**.

31 Page 100, line 33, delete "provides" and insert **"provide"**.

32 Page 100, line 35, delete "intends" and insert **"intend"**.

33 Page 101, line 15, delete "is not a" and insert **"are not at least two**
 34 **(2) persons that"**.

35 Page 101, line 16, delete "person that provides or intends" and insert
 36 **"provide or intend"**.

37 Page 101, line 19, delete "does not receive a" and insert **"receives**
 38 **one (1) or no"**.

- 1 Page 101, line 20, delete "response" and insert "**responses**".
- 2 Page 101, line 24, delete "one (1)" and insert "**two (2)**".
- 3 Page 101, line 25, delete "indicates" and insert "**indicate**".
- 4 Page 101, line 28, after "that" insert "**one (1) or**".
- 5 Page 101, line 31, delete "one (1)" and insert "**two (2)**".
- 6 Page 101, line 32, delete "indicates" and insert "**indicate**".
- 7 Page 101, line 37, after "that" insert "**one (1) or**".
- 8 Page 103, line 42, after "company" insert ";".
- 9 Page 103, line 42, strike "(as defined in IC 8-1-2-88".
- 10 Page 103, line 42, delete "(before its".
- 11 Page 104, delete line 1.
- 12 Page 106, line 24, delete "IC 8-1-2.6-1.5(c)," and insert "**IC**
- 13 **8-1-2.6-1.5(b),**".
- 14 Renumber all SECTIONS consecutively.
(Reference is to SB 245 as introduced.)

and when so amended that said bill do pass.

Committee Vote: Yeas 8, Nays 2.

Wyss

Chairperson